

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1243 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GI SANJANWALA

Versus

CENTRAL PHARMACY COUNCIL

Appearance:

MR BP TANNA for Petitioner
MR RC JANI for Respondent No. 1
MR HAROOBHAI MEHTA for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 13/04/99

ORAL JUDGEMENT

1. The petitioner who is running a Chemist shop in the name and style of Mono Chemists at Surat, has filed this petition praying for a relief to send him for the course known as Condensed Course of D.Pharm. and to allow him to attend the course and to direct the respondents to condone non-attendance to the first term

during the pendency and final hearing of the petition. It is averred in the petition that for running a Chemist shop, it is a condition precedent to have at least one qualified chemist to attend the shop and such person must either hold the degree in Pharmacy i.e. B.Pharm. or Diploma in Pharmacy or he must be a registered Pharmacist. It is the case of the petitioner that since many chemists like the petitioner were finding it difficult to get a qualified chemist, the respondents, after considering their difficulties, started a special course named as Condensed Course of Pharmacy which is a one year training course. The said decision was taken in the year 1981. As per the said decision, it was decided by the respondents that a person who has got his Chemist shop and who is having four years experience in the field and had passed SSC examination with Science and Mathematics as special subjects, is entitled to be admitted to the said course. Thereafter, the respondent no.2 invited applications from qualified candidates through the Chemists, for being admitted to the said course. It is the case of the petitioner that he had applied in the printed form sent by the respondent no.2 through the Association and had sent the same to the respondent no.2 together with all the requisite documents which was acknowledged by the respondent no.2 on 10.6.1981. However, the petitioner was not informed about his admission in the course. The petitioner, in fact, did not make any inquiry in the year 1981, because he thought that the respondent no.2 will inform him to join the course as and when his turn comes. In the year 1983, the petitioner had addressed a Registered Post AD letter dated 10.7.1983 to the respondent no.2 inquiring as to why the petitioner was not informed about his turn though he was duly qualified. According to the petitioner, the said letter remained unrepplied. It appears that the petitioner had filed a petition being Special Civil Application No.5352 of 1983. After hearing the parties and considering the reply, this Court, while disposing of the petition on 14.12.1983 passed the following order:-

"There is controversy between the petitioner on one hand and the respondent authority on the other about the production of the certificate annexed to the affidavit-in-rejoinder. According to the petitioner, that certificate showing his experience for two years in doing pharmacy work in his own shop was annexed. According to the respondent- authority, no such certificate was there. If the certificate had been there, it appears that the petitioner would have been

certainly held eligible. In this view of the matter, the respondent-authority should forward the proposal of the petitioner's name to the Central Pharmacy Council and if the said council permits the petitioner to join from this stage and/or condones the non-attendance of the first term, the respondent would not have any objection. The papers of proposal regarding the petitioner may be carried by this petitioner to the Central Pharmacy Council. With this observation, the petition stands disposed of."

2. In pursuance of the order passed by this Court, the respondent no.2 referred the case of the petitioner to respondent no.1 on 29.12.1983. It is the case of the petitioner that as the respondent no.1 had not taken any decision in the matter regarding admission of the petitioner, the petitioner has approached this Court for the reliefs stated hereinabove.

3. The present petition came up for hearing on 1.3.1984 and this Court issued notice returnable on 15.3.1984. Rule was issued on 10.9.1984 and it was made returnable on 1.10.1984. From that day onwards, the matter has been adjourned on one pretext or the other till date. Suffice it to say that the learned advocate for the petitioner has not obtained appropriate relief in the meantime regarding the admission of the petitioner in the course in question. On behalf of the respondent no.2, Mr.P.V.Sahita, Registrar, Gujarat State Pharmacy Council has filed affidavit-in-reply. In para 4(ii), it is stated by the deponent as under:-

"Accordingly, the proposal was forwarded by the second respondent on 29.12.1983. The petitioner had also submitted an unsigned application to the Pharmacy Council of India. As per communication dated 24th March 1984 received from the Pharmacy Council of India, the matter was duly examined by the Education Regulation Committee and the Executive Committee of the Pharmacy Council of India decided on 6th March 1984 that the candidates, namely, the petitioner could not be permitted to undertake the Course and/or examination as envisaged under Rule 6 of Education Regulations, 1981 (as amended upto date) at this late stage for the reasons given below:

- (1) the attendance of the candidate could not be condoned;

- (2) examinations for the first year course were already over;
- (3) the course of the second year subject has been covered to a great extent;
- (4) there is no more provision for continuing the Condensed Course any further."

4. In view of this reply, there remains hardly anything in this matter for this Court to give direction to respondents to send the petitioner for Condensed Course and/or to allow the petitioner attend the Course. Since the petitioner neither obtained appropriate relief at right time nor even made an attempt to obtain the same at appropriate time, I am afraid, at such a belated stage, this Court can grant the relief prayed for in the petition. Mr.R.C.Jani, learned advocate appearing for the respondent no.1 showed me the written instructions in this regard. Ordinarily, the respondent no.1 should have placed those instructions on record by way of an affidavit. However, considering the fact that the cause of the petitioner has become redundant in view of afflux of time, the first respondent was not insisted upon to file the reply. On the contrary, I have asked Mr.Jani to supply the copy of para-wise instructions to the learned advocate for the petitioner. Reading the said para-wise instructions, it is clear that the Education Regulations 1981 under which a special provision of Condensed Course upto 31.8.1984 was made has been repealed by the Revised Education Regulations 1991 duly approved by the Government of India, Ministry of Health and Family Welfare, notified in the Gazette of India, Part III-Section 4 No.28 dated 11.7.1992. Under this revised Education Regulations, a diploma course in pharmacy is a regular two years course and minimum qualification for admission to this course is:

"A pass in any of the following examinations with Physics, Chemistry and Biology or Mathematics.

- (1) Intermediate examination in Science;
- (2) The first year of the three year degree course in science.
- (3) 10 + 2 examination (academic stream) in science;
- (4) Pre-degree examination.
- (5) Any other qualification approved by the Pharmacy Council of India as equivalent to any of the above examinations."

5. In view of this, when the provision for Condensed Course in the Education Regulations 1981 is repealed and a regular two years diploma course is introduced in the year 1992, it is not possible for this Court to grant relief as prayed for in the petition filed in the year 1984. Thus, much water has flown since 1992 when a diploma course in Pharmacy was introduced. If the petitioner fulfils the requirement of admission in the said course, he can still apply, but merely because the petition is pending, no directions can be given that the petitioner be permitted to appear in the Condensed Course.

6. In view of this discussion, I see no merits in the petition. It is accordingly dismissed. Rule discharged. No order as to costs.

mhs/-